IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE V.ESWARAIAH

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WRIT PETITION NO : 10736 of 2004

Between:

N.Machara Rao, s/o.N.Brahmayya, R/o.H.No.1-118, Kothapeta Street, Karapa, E.G.Dist.

..... PETITIONER

AND

1 The Dist.Collector, E.G.Dist.at Kakinada.
2 The Deputy Registrar of Coop.Societies, Kakinada, E.G.Dist.
3 The Karapa PACS, Karapa mandal,E.G.District,rep.by its Chairman/PIC.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the impugned action of the respondents 1 and 2 in invoking the provisions of Act 2/1994 and thereby directing the 3rd respondent society to terminate the petitioner and consequential action of the 3rd respondent society in issuing proceedings dated 24-1-2003 terminating the petitioner from service without any notice or opportunity as highly illegal, arbitrary and violative of Art.14 and 21 of the Constitution of India and pass.

Counsel for the Petitioner: MR.G.V.SHIVAJI

Counsel for the Respondent Nos.1 & 2: GP FOR COOPERATION

The Court made the following :

ORAL ORDER:

The petitioner filed this writ petition questioning the order of the third respondent's proceedings dated 24-1-2003 in terminating the petitioner from the services.

The petitioner was initially appointed as a clerk in the Karapa PACS, Karapa Mandal, E.G. District, on 29-2-1996. It is stated that he was appointed in violation of A.P. (Regulation of appointments to Public Services and Rationalisation of staff pattern and pay structure) Act, 2 of 1994 and accordingly the Divisional Co-operative Officer, Kakinada, advised the third respondent to retrench the services of the petitioner and others whose appointments were irregular and in violation of the said Act vide his circular dated 31-10-2002. Pursuant to the said circular and instructions of the Divisional Cooperative Officer, Karapa, dated 31-10-2002, the third respondent passed the said order on 24-1- 2003 terminating the services of the petitioner by following the procedure prescribed under the Shops and Establishments Act 1988. It is not the case that the third respondent independently passed the said order but the said order passed by the third respondent is only consequential proceedings pursuant to the directions issued by the 2nd respondent and even according to the said directions it is stated that the appointment of the petitioner is made contrary to Act 2/1994. As long as the staffing pattern of a society is not fixed and approved by the Registrar of Co-op. Societies fulfilling the mandatory provisions imposed under section 116-C of the said Act, none of the employees of the society have any right to continue and all such appointments made contrary to Section 116 –C of the Act are deemed to be irregular and they have no right to continue.

Therefore, the only test that has to be subjected to is whether the staffing pattern and pay scales etc., was fixed by the Society and approved by the Registrar of Cooperative Societies in conformity with Section 116 C of the Act or not. If the

staffing pattern, pay scales are fixed by the Society and approved by the Registrar, even if any appointment is made subsequent to Act 2 of 1994 cannot be said as irregular. Thus, the only question that has to be considered is as to whether the appointment was made in conformity with Section 116-C of the AP CS Act. Though in normal course, the petitioner has to approach the Authority under A.P. Shops and Establishments Act,1988 questioning the order of the third respondent herein but as the same has been made pursuant to the direction of the Deputy Registrar of Co-operative Societies, I am of the view that without setting aside the impugned order, it is just and proper to remand the matter to the third respondent herein to consider afresh and pass appropriate order in accordance with law.

Accordingly, the writ petition is disposed of and the third respondent is directed to reconsider the issue herein afresh and pass appropriate orders as to whether the appointment of the writ petitioner is in any of the vacancy of the approved staffing pattern fixed by the Society and approved by the Registrar of Cooperative Societies under Section 116-C of the APCS Act and if so review its decision and pass appropriate orders in accordance with law. No order as to costs.

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Dt.13-9-04 V. ESWARAIAH, J

Kvrk

To

1 The District Collector, E.G. Dist.at Kakinada.
2 The Deputy Registrar of Coop. Societies, Kakinada, E.G.Dist.
3 The Chairman/PIC, The Karapa PACS, Karapa Mandal, E.G.District,

4. Two copies to GP for Co-operation, High Court Buildings, Hyd.(OUT)

5. Two CD copies.